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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/639,307	08/16/2000	Edouard A. Brodeur JR.	11-893	5059
23117 7590 10/31/2003				
NIXON & VANDERHYE, PC				
1100 N GLEBE ROAD				
8TH FLOOR				
ARLINGTON, VA 22201-4714				
EXAMINER				
RUSKA, CHERYL ANN				
ART UNIT		PAPER NUMBER		
1771				

DATE MAILED: 10/31/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 09/639,307	<b>Applicant(s)</b> BRODEUR ET AL.	
	<b>Examiner</b> Cheryl Juska	<b>Art Unit</b> 1771	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 12 June 2003.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 13-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 13-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All   b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                             | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____  |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)         | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114.

### ***Response to Amendment***

2. The amendment filed on June 12, 2003, has been entered. Claims 17-20 have been amended as requested. The pending claims are 13-20.
3. Said amendment is sufficient to withdraw the 112, 2<sup>nd</sup> rejection of claims 17-20.

### ***Claim Rejections - 35 USC § 102/103***

4. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
5. Claims 17, 18, and 20 stand rejected under 35 USC 102(b) as being anticipated by or, in the alternative, under 35 USC 103(a) as being obvious over US 5,567,497 issued to Zegler et al. for the reasons of record.

***Claim Rejections - 35 USC § 103***

6. Claims 13, 14, and 16 stand rejected under 35 USC 103(a) as being unpatentable over the cited Zegler patent in view of US 5,545,276 issued to Higgins for the reasons of record.
7. Claims 15 stands rejected under 35 USC 103(a) as being unpatentable over the cited Zegler and Higgins patents, as applied to claim 14 above, and in further view of US 4,018,957 issued to Werner et al. and/or US 3,945,955 issued to Ihde, Jr. for the reasons of record.
8. Claim 19 stands rejected under 35 USC 103(a) as being unpatentable over the cited Zegler patent, as applied to claim 18 above, and in further view of US 4,018,957 issued to Werner et al. and/or US 3,945,955 issued to Ihde, Jr. for the reasons of record.

***Response to Arguments***

9. Applicant's arguments filed with the amendment of June 12, 2003, have been fully considered but they are not persuasive.
10. Specifically, applicant traverses the above 102/103 rejection of claims 17, 18, and 20 by relying upon the Brodeur Declaration, also submitted on June 12, 2003. Applicant asserts said declaration "clearly establishes that the final product as claimed is quite different from the final product of the Zegler patent" in that the Zegler carpet curls, while the present invention does not (Amendment, page 6, 3<sup>rd</sup> paragraph). The examiner respectfully disagrees that said declaration is sufficient to overcome the rejection of claims 17, 18, and 20.
11. First, said claims are drawn to a carpet and not specifically carpet tiles, while the declaration is only directed to carpet tiles. It is well established in the carpet art that carpet tiles, either uninstalled or installed, are susceptible to curling or doming. However, it is not

Art Unit: 1771

conventional to describe the degree of curling in a broadloom or roll carpet. Specifically, an uninstalled carpet inherently exhibits curling in the sense that said carpet is in roll form, while an installed carpet inherently lacks curling due to said carpet being mechanically restrained by adhesive or staples in a non-curled position. It is more conventional when discussing broadloom or roll carpet to discuss the lack of differential shrinkage between carpet layers and/or stabilization of said carpet. Thus, the evidence regarding carpet tiles submitted in the declaration is not necessarily applicable to carpet not in tile form, as is recited in claims 17-20.

12. Secondly, the declaration establishes the carpet tiles of Zegler exhibit curl, while the present carpet tiles do not, due to a difference in the process of making said tiles. Specifically, said declaration attributes said lack of curling in the present invention to adhering a “preformed open-mesh fiber-reinforced foam layer with foam nodules” to the carpet backing at a “lower-than-fusing temperature,” while Zegler employs a fusing temperature for in-situ foaming and to fuse said foam to the carpet backing (Declaration, sections 2, 3, and 6). Thus, said declaration establishes that the difference in the prior art product and the instant invention is not necessarily due solely to the process step of foaming in-situ versus preformed foam, but rather the declaration establishes the process temperature is also critical in eliminating curling in the tile product. Since, the claims do not include the process limitation of temperature, said declaration is insufficient to overcome the rejection of claims 17-20, as well as the claims directed to carpet tiles (i.e., claims 13-16).

### ***Conclusion***

13. Any inquiry concerning this communication or earlier communications from the

Application/Control Number: 09/639,307

Page 5

Art Unit: 1771

Examiner should be directed to Cheryl Juska whose telephone number is 703-305-4472. The Examiner can normally be reached on Monday-Friday 10am-6pm.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Terrel Morris can be reached on 703-308-2414. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.



CHERYL A. JUSKA  
PRIMARY EXAMINER

cj  
October 29, 2003